

**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Notice: PIH 2003-19 (PHA)

Special Attention of:

Public Housing Agencies;
All Public Housing Directors;
HUD Field Offices; HOPE VI
Coordinators

**Issued: July 23, 2003
Expires: July 31, 2004**

**Cross References: Notices: PIH 2003-10
(HA), PIH-2001-26 (HA)**

SUBJECT: Fiscal Year 2003 Capital Fund Grants Processing Notice

1. **Purpose:** The purpose of the Notice is to provide public housing agencies (PHAs) information and guidance on the Fiscal Year (FY) 2003 Capital Fund. It also provides other program information regarding the Capital Fund.
2. **Appropriations.** President Bush signed the HUD Appropriations Act for FY 2003 on February 20, 2003. The Act provided \$2,730,000,000 for the Capital Fund. The Act also contains a rescission provision that reduces the total amount available for the Capital Fund to \$2,712,255,000. All references to amounts provided under the Appropriations Act in this Notice will reflect the amount available after applying the rescission.

The Act also contained a number of set-asides for items such as technical assistance, Neighborhood Networks, working capital fund, supportive services, emergencies and natural disasters. Further, the Appropriations Act also required that \$ 444,094,500 be set-aside from the \$ 2.712 billion for PHAs that obligated 90 percent of their Capital Fund grants by the statutory deadlines for FYs 1998, FY 1999, FY 2000 and FY 2001.

Both the 3 percent bonus for High Performers in PHAS and the \$444 million set-aside, along with the other set-asides, are deducted from the \$2.712 billion appropriated by Congress.

As noted above, the FY 2003 Appropriations Act requires that \$444 million be set-aside only for PHAs that have obligated in a timely manner in fiscal years FYs 1998, FY 1999, FY 2000 and FY 2001. Consequently, a PHA that fails to obligate its Capital

Fund grants in a timely manner in any one of the four fiscal years is ineligible for a portion of the \$444 million set-aside.

The obligation deadlines for FY 2001 Capital Fund grants were established in Notice PIH 2001-26 (HA). Pursuant to Notice PIH 2001-26, if a PHA's fiscal year began on January 1, April 1 or July 1, the obligation deadline was **June 30, 2003**. If a PHA's fiscal year began on October 1, its obligation deadline is **September 30, 2003**. Therefore, in order to fully implement the provisions of the FY 2003 Appropriations Act, the Department will not distribute the \$444 million set-aside until after the **September 30, 2003** obligation deadline has passed. It is estimated that the Department will provide grants from the \$444 million set-aside in November 2003 or sometime thereafter.

The table below shows the appropriated amount, the carryover funds from prior years and the Congressionally mandated set-asides to be funded from the Capital Fund appropriation.

Capital Fund Appropriation For Fiscal Year 2003	
Congressional Appropriation	\$2,712,255,000
Technical Assistance	\$ 50,668,500
Emergency/Disaster	\$ 49,675,000
ROSS	\$ 54,642,500
Working Capital Fund	\$ 18,479,100
Neighborhood Networks	\$ 14,902,500
Section 23 Lease Adjustment	\$ 496,750
Total Set-asides	\$ 188,864,350
Balance of 2003 Available- Post Rescission	\$2,523,390,650
Carryover	\$ 69,800,735 ^{1/}
Recaptures	\$ 9,898,436 ^{2/}
Total Available for Capital Fund	\$2,603,089,821

^{1/} Includes emergency/disaster and modernization grant carryover.

^{2/} Includes modernization grant recaptures.

Fiscal Year 2003 Capital Fund Appropriation With Carryover and Recaptures	
Basic Formula Grant	\$2,149,096,885
Timely Obligations Set-aside	\$ 444,094,500
Recaptures for High Performers	\$ 9,989,436
Total Available for Capital Fund	\$2,603,089,821

3. **Formula Calculation.** The Capital Fund formula regulation gives the Department the authority to establish a date for reporting PHA building and unit data for the purpose of

calculating the formula. 24 CFR Section 905(f)(4) states as follows: ***“For developments losing units as a result of demolition and disposition, the number of units on which capital funding is based will be the number of units reported as eligible for capital funding as of the reporting date.”***

In a letter dated May 31, 2002, HUD requested that all PHAs update the Public Housing Information Center (PIC) database in preparation for running the Capital Fund formula. The letter requested that certain PHAs update their agency’s data on actual demolition or disposition of public housing units no later than June 15, 2002. PHAs were notified at that time that if they failed to provide the requested information by the deadline, the Department would use the total number of units approved for demolition or disposition as the basis for calculating the formula rather than the actual number of demolished or disposed units.

Where the Department used the actual number of units approved for demolition or disposition because the PHA failed to report in a timely manner, the PHA’s formula grant was calculated based on a reduced number of units and therefore, the formula grant amount was likewise reduced. The FY 2003 Capital Fund formula was computed based on building and unit data under management in PIC (adjusted for demolition or disposition) as of June 30, 2002.

4. Capital Fund Funding Sheet. The Funding Sheet identifies up to two Capital Fund grants for 2003.

A. Formula Grant.

The primary grant identified is the PHA’s annual formula allocation. Components of the annual formula grant include:

- The total funding (includes all components).
- As applicable, the Public Housing Assessment System (PHAS) bonus (3 percent for High Performers).
- As applicable, a portion of the Capital Fund Recaptures, for PHAS High Performers and identified Moving to Work (MTW) participants only.

There are currently eight PHAs with MTW Agreements that exempt the PHAs from HUD’s Performance Assessment System but requires that they be entitled to any and all incentives, including bonus points which may be applicable to competitive proposals. These eight MTW PHAs will receive the 3 percent PHAS bonus.

The FY 2003 Appropriations Act requires that recaptured Capital Funds be reallocated only to PHAS High Performers. Consequently, these PHAs will receive a portion of \$9.8 million in recaptured Capital Funds. In prior years, recaptured Capital Funds were added to the carryover and included in the total amount of funds available for the formula in the following fiscal year.

B. Replacement Housing Factor (RHF) Grant.

The second grant that may be identified on the Funding Sheet is the RHF grant. A RHF grant may be identified where the PHA has reported demolition or disposition of public housing units for the prior year. If the PHA is eligible for a RHF grant, it will have a separate Annual Contributions Contract (ACC) Amendment for the RHF grant. A detailed description and requirements of RHF grants can be found in Notice PIH 2003-10 (HA) and 24 CFR Part 905. RHF grants due for a second increment of funding in FY 2003 will be distributed after the RHF Plans are approved. The Department expects all reviews to be completed within 90 days from the date of this Notice.

5. **Data Errors.** Capital Fund grants are calculated based on data available at a certain point in time. HUD is not authorized by the FY 2003 Appropriations Act to make adjustments to prior year obligations with FY 2003 funds. As such, there will be no additional funding to correct data errors from prior year Capital Fund grants. This includes data errors in building/unit characteristics. As noted above, HUD notified PHAs of their responsibility to ensure that the data in the Public Housing Information Center (PIC) is accurate. In this regard, PHAs must ensure that their PIC data is updated no later than **September 30, 2003**, in anticipation of calculating the FY 2004 Capital Fund formula.
6. **Obligation and Expenditure Deadlines for 2003.** In FY 2003, HUD will make Capital Funds available to all PHAs at the same time and have a single commencement date for obligation and expenditure deadlines. This date will be reflected as the effective date on the ACC. The single commencement date enables PHAs to address unmet housing needs in a timely manner and without delaying availability based upon the start of a PHA's fiscal year. It will also enable PHAs and HUD Field Offices to more easily monitor the 2-year obligation and 4-year expenditure deadlines.

The following timeline will be followed to establish a single commencement date for **ALL** PHAs, regardless of whether their FY 2003 Annual PHA Plan is approved.

Activity	Action Date(s)
HUD sends Capital Fund formula ACC Amendments to PHAs	August 14, 2003
PHAs sign ACC amendments and return with copies to Field Offices	September 12, 2003
Field Offices: Execute ACC amendments	September 17, 2003
Forward ACCs to Ft. Worth Spread PHA's BLIs in LOCCS Web	September 30, 2003
Funds Available for obligation and expenditure for ALL PHAs ¹ (start date)	September 17, 2003

¹ See Notice PIH 2003-10(HA) for obligation start date of RHF grants.

The FY 2003 Capital Funds will be available to all PHAs that have a Capital Fund Five-Year Action Plan. The PHA can, therefore, obligate Capital Funds for any activity in its Capital Fund Five-Year Action Plan. In some instances, the PHA will have an approved Capital Fund Five-Year Action Plan but not an approved Annual PHA Plan for the current fiscal year. We strongly encourage PHAs to continue to work with the Field Offices to get their Annual PHA Plan approved.

For PHA's that have an approved FY 2003 Annual PHA Plan and budget, the Field Office can proceed to spread the approved budget in Line of Credit Control System (LOCCS) Web. In cases where the PHA does not have an approved Annual PHA Plan for FY 2003, the Field Office is to spread the entire authorized amount, which is the amount identified on the ACC for that PHA, into three BLIs as follows:

Business Rules for Spreading Entire Budget in LOCCS Web – PHAs without Approved PHA Plan
<ul style="list-style-type: none">• BLI 1408 Management Improvement – up to 20% of the grant authorized amount• BLI 1410 Administration – up to 10% of the grant authorized amount• BLI 0110 Initial Budget - input remainder of grant authorized amount

For PHAs with fiscal year end of September 30, 2003, LOCCS has been programmed to automatically spread the budget in accordance with the business rules described above.

BLI 0110 is a new account established in FY 2002 as a general location to put the balance of the funding. When a PHA reports obligation and expenditures the items or activity must be entered into LOCCS using the appropriate BLI e.g., a signed contract for demolition of a portion of the development is to be entered under BLI 1485 pursuant to the Comprehensive Grant Guidebook, 7485.3. Once an agency's FY 2003 Annual PHA Plan and Capital Fund budget are approved, the Field Office can spread the PHA's grant in accordance with the budget in the Annual PHA Plan. PHAs may exercise fungibility between work items but will be required to reflect these work items in their FY 2003 Annual Plan submissions.

Since the Department anticipates using this approach in future years, PHAs should include as many work items in its 5-Year Action Plan as necessary so that they will be able to proceed fully on approved work items when their Capital Fund grant is made available.

7. **Annual Contributions Contract (ACC) Amendment(s).** The Capital Fund ACC amendment(s) must be signed by the PHA and **received** by the local HUD Field Office no later than **September 12, 2003**. The PHA should send the original signed ACC(s), and the three copies to the local HUD Field Office. All HUD Field Offices (FOs) **must**

execute all Capital Fund Amendments for formula grants² on September 17, 2003. The FY 2003 funds are available for obligation by the PHA on, **September 17, 2003**, which is the commencement date for obligation and expenditure for all PHAs. The obligation deadline for the FY2003 grants is **September 16, 2005**. The expenditure deadline for FY 2003 formula grants is **September 16, 2007**. The FOs should forward the executed ACC (s) to the Ft. Worth Accounting Center. Subsequently, the FOs are to spread the budget for the grant in LOCCS web. The FOs have until **September 30, 2003** to complete this task.

- 8. PHAs That Fail to Submit an ACC Amendment or Refuse the Capital Fund.** If a PHA chooses not to participate in the Capital Fund Program this fiscal year, the PHA is to advise its local HUD Field Office in writing no later than **September 12, 2003**. Any PHA, regardless of its intent, that does not submit a signed FY 2003 Capital Fund ACC by **September 12, 2003** will not receive its FY 2003 Capital Fund grant. These funds are not held for the PHA. A PHA will still be eligible to receive Capital Funds in subsequent fiscal years following submission and approval of all required documents.
- 9. Obligations and Expenditures for Deadlines FY 2002 and Prior Years, Recaptures and Extensions:**

- A. Recapture for failure to meet 1999 and 2000 deadlines. Section 9(j) of the U.S. Housing Act of 1937 (the Act) requires that Capital Fund grants be obligated within 2-years and expended within 4-years from the date the funds were made available. Section 9(j) permits PHAs to continue to obligate funds after the deadline, but imposes a penalty that reduces the PHA's Capital Fund grant for the year by 1/12th for each month the PHA was in noncompliance. The Act does not allow exceptions to the 4-year expenditure deadline, unless Headquarters extended the obligation deadline for the grant. Therefore, if a PHA does not expend its entire grant by the 4-year deadline and the obligation deadline was not extended, the unexpended funds must be recaptured.

The HUD FY 2003 Appropriations Act was signed on February 20, 2003. The Appropriations Act provides new requirements with regard to funds not obligated by the deadline. Specifically, the Appropriations Act provides that:

“any amounts made available under the public housing Capital Fund for fiscal years 1999, 2000, 2001, 2002 or 2003 that remain unobligated in violation of paragraphs (1) of such section 9(j) or unexpended in violation of paragraph (5)(A) of such section 9(j), the Secretary shall recapture any such amounts....”

Headquarters reviewed the 1999 Capital Fund grants last year to determine those in non-compliance and required those funds that failed to meet the obligation deadline to be recaptured. That recapture has been completed.

² The start dates for a Replacement Housing Factor grants are described in Notice 2003-10 (HA)

Recently, the Department identified a FY 1999 Capital Fund grant that was not in compliance. This PHA did not appear in LOCCS because it did not have an approved ACC Amendment. These funds will be taken back by HUD and added to funds to be distributed to PHAs in the future. There also are a number of PHAs with FY 2000 grants that did not meet the obligation deadline. Pursuant to Section 9(j), those PHAs proceeded to obligate funds after the deadline. However, the Appropriations Act **requires** HUD to recapture any amounts not obligated or expended by the deadline. Since this change is statutory, the Department has no authority to waive the implementation of this provision.

Therefore, if your PHA did not obligate its FY 1999 or FY 2000 Capital Funds by the obligation deadline and did not receive an extension of the obligation deadline approved by the Secretary or the Deputy Secretary, you must immediately cease obligating funds for those grants. HUD will contact you in the near future to recapture funds not obligated by the deadline.

The expenditure deadline for FY 1998 and FY 1999 Capital Fund grants is September 30, 2003. If your PHA does not meet the expenditure deadline, it must immediately cease all expenditures. Your local HUD Field Office will contact you after each deadline to recapture funds not expended by the deadline.

- B. Obligation deadline for FY 2001 grants. Pursuant to Notice PIH 2001-26, if your PHA's fiscal year began on January 1, April 1 or July 1, the obligation deadline is ***June 30, 2003***. If your PHA's fiscal year began on October 1, its obligation deadline is ***September 30, 2003***. If you do not obligate 90 percent of your grant funds by those deadlines, you must cease obligating funding. Your local HUD Field Office will contact you after each deadline to recapture funds not obligated by the deadline.
- C. Requests for Extensions. Only the Secretary or Deputy Secretary can approve extensions of the obligation deadline for Capital Fund grants. Extensions of the obligation deadlines shall only be justified based on the criteria in section 9(j) of the U.S. Housing Act of 1937, as amended. Specifically, extensions may be granted if failure of the agency to obligate in a timely manner is attributable to the following:
- Litigation;
 - Obtaining approvals of the Federal Government or a State or local government;
 - Complying with environmental assessment and abatement requirements;
 - Relocating residents;
 - An event beyond the control of the public housing agency; and
 - Any other reason established by the Secretary by Notice in the *Federal Register*.

All requests, regardless of fiscal year, for extensions of the deadlines must be received in Headquarters no later than 30 days prior to the deadline. Requests

submitted after that date will be denied. Requests are to be submitted to William C. Thorson, Director, Office of Capital Improvements, 451 7th Street SW, Room 4146, Washington, DC 20410. Requests may be faxed to (202) 401-3997.

- 10. Recapture Procedures.** Recapture of FY 1999³ and FY 2000 Capital Fund grants where the PHAs failed to obligate 90 percent of the authorized amount by the obligation deadline date or fully expend by the expenditure deadline date will be performed by HUD Headquarters. HUD Headquarters will notify PHAs and Field Offices of the recapture and the reduction in the grant amount.

The following procedures are to be used by Field Offices for all FY 2001 and 2002 grants that do not meet the obligation or expenditure deadlines.

- A. Upon the occurrence of the obligation deadline, if the PHA failed to obligated 90 percent or more of the total grant, LOCCS will prevent further obligations and disbursements beyond he amount obligated as of the deadline. LOCCS puts an automatic review on disbursements after the expiration of the expenditure deadline.
- B. The Field Office should monitor LOCCS to identify potential data entry errors.
- C. The Field Office is to send a letter to each PHA that:
 - Advises them of Appropriations Act requirements.
 - If any funds have been disbursed in excess of the amount obligated on the deadline, they are to wire transfer the excess funds back to HUD for that specific grant within 5 business days of receipt of the letter. See the wire transfer instructions attached.
 - Transmits an ACC amendment, if applicable, reducing the total grant to the amount obligated as of the deadline, which the PHA is to execute and return to the Field Office within 30 days. If no ACC was executed, notification that the grant has been recaptured.
 - If the ACC is not executed and received by the Field Office within 30 days, HUD will unilaterally execute the ACC and proceed with recapture.
 - Alerts PHAs that if 90 percent of the funds for their FY 2001 grants are not obligated by the (6/30/2003 or 9/30/2003, as applicable) deadline, they are to cease obligations as of the deadline. The Field Office will be sending them an ACC to recapture those unobligated funds.
- D. Upon execution of the ACC, the Field Office will immediately process the recapture.
- E. The Field Office must notify Headquarters that the above has been accomplished by the deadline.

- 11. Regulatory Requirements.** HUD plans to issue a Capital Fund program regulation in the near future. Until a final rule is published, PHAs should proceed in accordance with 24 CFR Part 968 for modernization activities, except where statutory requirements prevail.

³ After the recapture of FY 1998 and FY 1999 grants last year, the Department identified several grants that were reserved in PAS but not identified in LOCCS because the PHA did not have a signed ACC Amendment. These grants should have been targeted for recapture last year and were inadvertently missed.

For example, PHAs must comply with 24-month obligation and 48-month expenditure requirements of section 9(j) of the U.S. Housing Act of 1937, as amended. In addition, all development activities must be processed in accordance with 24 CFR Part 941, which requires the submission of Development Proposal (§941.304) and a Site Proposal (§941.303).

12. Paperwork Reduction. The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2577-0226 and 2577-0033. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

13. Office of Capital Improvements Web Site and Important Dates.

To enhance communication with the public housing agencies the Office of Capital Improvements has established a web site. Please check the website to ensure that you have received the latest communications.

The Office of Capital Improvements Web site:

<http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm>

To enable the Office to send messages via e:mail and send direct mailing, PHAs must be responsible for maintaining an up-to-date e:mail addresses and mailing address in PIC.

Action(s)	Significant Date(s)	Citation in Notice
FYs 1998 & 1999 Grants Expenditure Deadline	September 30, 2003	See Paragraph 9(A)
PHAs mail ACC Amendments for FY 2003 to FOs	September 12, 2003	See Paragraphs 6 & 7
PHAs that Refuse CF Grants Notify FOs	September 12, 2003	See Paragraph 8
Field Offices Execute FY 2003 ACC amendments	September 17, 2003	See Paragraphs 6 & 7
Obligation & Expenditure Start Date for FY 2003 Grants	September 17, 2003	See Paragraphs 6 & 7
FY 2001 Obligation End Dates	June 30, 2003 or September 30, 2003	See Paragraph 9(B)
Requests for Secretarial or DAS Extension for Obligation for FYs 2001 and 2002	30 days prior to the Obligation Deadline Date	See Paragraph 9(C)
PHA Deadline to Update PIC for FY 2004 Capital Fund formula	September 30, 2003	See Paragraph 5

For program questions you may contact the Office of Capital Improvements via e-mail:
PIH OCI@HUD.GOV

 /s/
 Michael Liu, Assistant Secretary
 For Public and Indian Housing